

ESTTA Tracking number: **ESTTA683258**

Filing date: **07/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204122
Party	Plaintiff Empire State Building Company L.L.C.
Correspondence Address	ERIC J SHIMANOFF COWAN LIEBOWITZ & LATMAN PC 1133 AVENUE OF THE AMERICAS NEW YORK, NY 10036 UNITED STATES ejs@cll.com, lmr@cll.com, wmb@cll.com, trademark@cll.com, fxm@cll.com, mlk@cll.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Lindsay M. Rodman
Filer's e-mail	trademark@cll.com, lmr@cll.com, ejc@ccl.com
Signature	/Lindsay Rodman/
Date	07/13/2015
Attachments	NYC BEER - Second NOR in Rebuttal.pdf(649258 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

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ESRT EMPIRE STATE BUILDING, L.L.C.,	:	
	:	Opposition No. 91204122
Opposer,	:	
	:	
v.	:	
	:	
MICHAEL LIANG,	:	
	:	
Applicant.	:	
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**OPPOSER'S SECOND NOTICE OF RELIANCE
UPON APPLICANT'S DISCOVERY RESPONSES IN REBUTTAL
PURSUANT TO TRADEMARK RULE 2.120(j)**

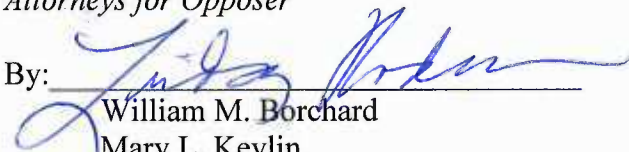
Pursuant to Trademark Rule 2.120(j), Opposer ESRT Empire State Building, L.L.C.
hereby gives notice of its reliance upon Applicant's Response to Opposer's First Set of Requests
for Admission No. 3, copies of which Requests for Admission and responses are attached hereto
as Exhibit A. Applicant's response to the Request for Admission is offered to rebut Applicant's
testimony regarding the fame of Opposer's Marks and/or the Empire State Building.

Dated: New York, New York
July 13, 2015

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By:



William M. Borchard

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Attorneys for Opposer

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Attorneys for Opposer

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

EXHIBIT A

**(To Opposer's Second Notice of Reliance
Upon Applicant's Discovery Responses in Rebuttal)**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
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EMPIRE STATE BUILDING COMPANY L.L.C.,	:
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Opposer,	:
	:
v.	:
	:
MICHAEL LIANG,	:
	:
Applicant.	:
	:
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Opposition No. 91204122

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer Empire State Building Company L.L.C. ("Opposer") propounds the following First Set of Requests for Admissions to Applicant Michael Liang ("Applicant"). Responses in writing shall be served within thirty (30) days of service of these requests.

DEFINITIONS AND INSTRUCTIONS

Opposer incorporates by reference herein the definitions and instructions contained in Opposer's First Set of Interrogatories and Requests for Production of Documents and Things to Applicant.

Ref. No. 22690.013

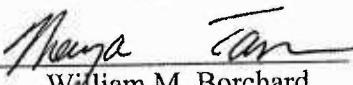
REQUESTS FOR ADMISSIONS

Request No. 3

Admit that Opposer's Empire State Building Marks are closely identified and associated with Opposer's goods and services.

Dated: New York, New York
February 19, 2013

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: 
William M. Borchard
Mary L. Kevlin
Maya L. Tarr

1133 Avenue of the Americas
New York, New York 10036
212-790-9200

Filed with Opp
Board's Mark.

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2013, I caused a true and complete copy of the foregoing *Opposer's First Set of Requests for Admissions* to be served by First Class Mail to Applicant's Attorney and Correspondent of Record, David Yan, Law Offices of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, New York 11354 4232, United States.

Dated: New York, New York
February 19, 2013


Maya L. Tarr

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
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EMPIRE STATE BUILDING COMPANY L.L.C.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.: 91204122
	:	
MICHAEL LIANG,	:	
	:	
Applicant.	:	
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Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S RESPONSE
TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120,
Applicant, MICHAEL LIANG ("Applicant"), by and through his undersigned attorney, hereby
submit responses and objections to Opposer Empire State Building Company L.L.C.
("Opposer")'s First Set of Requests for Admissions:

GENERAL OBJECTIONS

The following General Objections are incorporated into each Specific Objection and
Response below as if set forth in full responses to each individually numbered response. The

failure to specifically incorporate a General Objection shall not be construed as a waiver of the same.

1. Applicant objects to each and every Request for Admissions herein to the extent that it seeks information or documents protected by any privilege or protection from discovery, including but not limited to the attorney-client privilege and the work-product doctrine. The inadvertent production of any material protected by the attorney-client privilege, the work-product doctrine or any other applicable privilege, immunity or protection from disclosure is not intended and should not be construed to constitute a waiver. Applicant reserves the right to assert all applicable privileges and protections from production.
2. Applicant objects to each and every Request for Admissions to the extent that it seeks to impose requirements that are inconsistent with, or beyond those contemplated by, the Federal Rules of Civil Procedure and/or the Code of Federal Regulations.
3. Applicant objects to each and every Request for Admissions to the extent that the definitions, instructions, or specific requests are vague, ambiguous, overly broad, and/or unduly burdensome.
4. Applicant objects to each and every Request for Admissions to the extent that it seeks information that is a matter of public record or equally available to Opposer.
5. Applicant objects to each and every Request for Admissions to the extent that it calls for an expert opinion on the ground that it violates the work-product doctrine.

6. Applicant objects to each and every Request for Admissions to the extent that it seeks Applicant confidential and proprietary information, the disclosure of which will or may cause harm to Applicant.
7. Applicant objects to each and every Request for Admissions as overly broad, unduly burdensome, and oppressive, insofar as it seeks information which is in the custody, possession, or control of Opposer or its agents, or is equally available to the public.
8. Applicant objects to each and every Request for Admissions to the extent that it is overly broad, unduly burdensome, and oppressive, where the Request for Admissions requests the identification of “all” documents when all relevant facts can be obtained from fewer than “all documents.”
9. Applicant objects to each and every Request for Admissions to the extent that it is overly broad and unduly burdensome by requesting documents that are neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.
10. Applicant objects to each and every Request for Admissions to the extent that it is vague or ambiguous.
11. Applicant objects to each and every Request for Admissions to the extent that it is overly broad, unduly burdensome, or oppressive.
12. Applicant objects to each and every Request for Admissions to the extent that it requires Plaintiff to produce documents not within Applicant’s possession, custody, or control. Unless otherwise specified, Applicant will not produce any

documents in the possession, custody, and control of any third party, including any agent or outside attorney of Applicant.

13. Applicant objects to each and every Request for Admissions to the extent that it seeks information without any limitation to the time period relevant to this action.
14. In making these objections, Applicant does not in any way waive, or intend to waive, but rather intend to preserve and are preserving.
15. All objections as to competency, relevancy, materiality, and admissibility of any information that may be provided in response to the Request for Admissions, or the subject matter thereof.
16. All rights to object on any ground to the use of any information that may be provided in response to the Request for Admissions, or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other matter.
17. All rights to object on any ground to any request for further responses to the Request for Admissions or any other document request.
18. Applicant's objections herein and the production of any documents by Applicant pursuant to any Request for Admissions are not intended to waive or prejudice any objections or privileges Applicant may later assert, without limitation.
19. Applicant reserves the right to supplement, amend, correct, or clarify the responses and objections to the Request for Admissions.

In addition to the General Objections set forth above, Applicant sets forth below Specific Objections to individual requests where appropriate, including objections that are not generally applicable to all of the requests. By setting forth such Specific Objections, Applicant does not

intend to limit the General Objections set forth above. To the extent that Applicant responds to requests to which they object, such objections are not waived by a response.

The information provided herein is based upon, and is therefore limited by, the records and information in existence, presently collected and thus far discovered in the course of the preparation of these responses.

Request No. 3:

Admit that Opposer's Empire State Building Marks are closely identified and associated with Opposer's goods and services.

Response No. 3:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Applicant does not understand the Opposer's Request for Admissions because the term "Opposer's goods and services" is vague and not defined anywhere by Opposer.
- (b) Applicant admits to the extent that Opposer's Empire State Building Marks are identified and associated with goods and services in the Opposer's self-serving statements in the U.S. Registration No. 2411972, 2413667, 2429297, and 2430828.

Dated: Flushing, New York
September 5, 2013

Law Offices of David Yan
Attorney for Applicant

by: /David Yan/
David Yan

136-20 38th Avenue, Suite 11E
Flushing, NY 11354
Tel.: (718) 888-7788

AFFIRMATION OF SERVICE

I hereby certify that, on September 5, 2013, I caused a true and complete copy of the foregoing Applicant's Response to the Opposer's First Set of Requests for Admissions to be served by electronic mail in PDF Format to Opposer's counsel of record, William M. Borchard, Esquire of Cowan Liebowitz, & Latman, P.C., at his email address of at WMB@cjl.com.

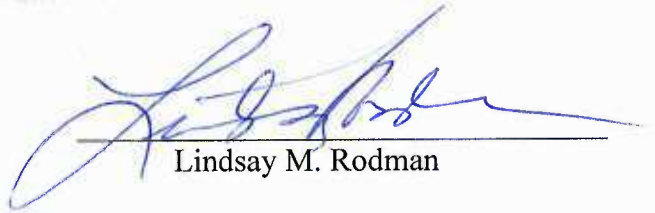
/David Yan/
David Yan

CERTIFICATE OF SERVICE

I hereby certify that, on July 13, 2015 I caused a true and complete copy of the foregoing
Opposer's Second Notice Of Reliance Upon Applicant's Discovery Responses in Rebuttal
Pursuant To Trademark Rule 2.120(j) and accompanying Exhibit A to be sent via First Class
Mail postage prepaid, to Applicant's Attorney and Correspondent of Record, David Yan, Law
Offices Of David Yan, 136-20 38th Avenue, Suite 11E, Flushing, NY 11354-4232.

Dated: New York, New York

July 13, 2015



Lindsay M. Rodman